



## Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at <http://about.jstor.org/participate-jstor/individuals/early-journal-content>.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact [support@jstor.org](mailto:support@jstor.org).

## ASHLOCK v. COMMONWEALTH.

June 11, 1908.

[61 S. E. 752.]

1. **Criminal Law—Granting Continuance—Accused's Rights.**—Error in continuing a case did not entitle accused to be discharged and is no ground for reversing a conviction.

2. **Same—Objections to Venire Facias—New Trial.**—Under Code 1887, § 4018, as amended by Act Feb. 10, 1904 (Acts 1904, pp. 15-17), being now Code 1904, p. 2114, objections to a writ of venire facias, made after verdict, furnished no ground for setting aside the verdict or granting a new trial.

3. **Jury—Drawing Jurors.**—Code 1887, § 4018, as amended by Act Feb. 10, 1904 (Acts 1904, pp. 15-17), being now Code 1904, p. 2114, provides for the drawing of jurors in felony cases by the clerk of the court or his deputy in the presence of the judge, or, in his absence, in the presence of a commissioner in chancery. Section 3146 makes similar provision for drawing jurors for the trial of civil cases, providing that the commissioner shall be designated by the judge. Held, that it was not intended that the commissioner in whose presence jurors may be drawn, in the absence of the judge, under section 4018, should be a deputy of the clerk, but that the court should designate a commissioner not a deputy.

4. **Same.**—Under Code 1887, § 4018, as amended by Act Feb. 10, 1904 (Acts 1904, pp. 15-17), being now Code 1904, p. 2114, providing for the drawing by the clerk of the court of jurors for felony cases, in making up a list of the persons whose names have been drawn, the clerk has no right to leave off the list the name of any person not embraced within the classes designated by such section, since, if any person whose name is drawn is, for any cause not a competent person to sit on the jury, that is a question for the court, and not for the clerk.

5. **Criminal Law—Evidence—Letters.**—Generally the mere contents of a letter purporting to be that of a particular person are not of themselves sufficient evidence of its genuineness, and in a criminal case it was improper to permit letters to go to the jury, where there was no proof that either the body of the letters or the signature was in accused's handwriting, though two of them were found between the blankets of the bed in which he slept in the jail, and one of them directed the persons to whom it was written where the third could be found, and it was found in the place indicated.

[Ed. Note.—For cases in point, see Cent. Dig. vol. 14, Criminal Law, § 1012.]

Error from Circuit Court of City of Williamsburg.

One Ashlock was convicted of crime, and he brings error. Reversed and remanded.

*Armistead & Armistead*, for plaintiff in error.

*Wm. A. Anderson*, Atty. Gen., for the Commonwealth.

BUCHANAN, J. The first error assigned is to the action of the court in continuing the case at the June term, 1907, of the court.

So far as the record shows, this action of the court was not excepted to, and, if it had been, even if the court had erred, the mere continuance of the case did not entitle the accused to be discharged from further prosecution, and would furnish no ground for reversing the judgment complained of. *Benton's Case*, 91 Va. 782, 21 S. E. 495.

The refusal of the court to quash the writ of *venire facias* is assigned as error. One of the objections relied on is that the order of the judge directing the clerk to summon 40 persons for the trial of the accused was not entered of record.

This objection is based on a mistake of fact. The order is copied into the transcript for the writ of error, and the clerk certifies that it is a true transcript from the records of the court.

The other objections to the writ of *venire facias* were made after the verdict, and furnish no ground for setting aside the verdict or granting a new trial. Section 4018 of the Code of 1887, as amended by the act approved February 10, 1904 (*Acts* 1904, pp. 15-17), now Code 1904, p. 2114. It may not be improper, however, to say with reference to these objections, that, as the names of the persons to be summoned as jurors under the provisions of section 4018 of the Code, as amended, may be drawn either by the clerk of the court or his deputy, it was not intended that the commissioner in chancery, in whose presence the jurors may be drawn in the absence of the judge, should be the deputy of the clerk. It seems pretty clear, from that section and section 3146, although not expressly prohibited, that the court should designate a commissioner who is not a deputy of the clerk. The clerk, in making up a list of the persons whose names have been drawn from the box, has no right to leave off of the list the name of any person not embraced within the classes designated by section 4018 of the Code. If any person whose name is drawn from the box is for any other cause not a competent person to sit on the jury, that is a question for the court, and not for the clerk.

The court permitted certain letters to go to the jury, which were objected to on the ground that it was not shown, that they were written by the accused, or that he authorized any other person to write them. To one of these letters was attached the name of the accused. The others were unsigned.

Although it appeared in evidence that the accused could write, there was no proof introduced to show that either the body of the letters or the signature was in the handwriting of the ac-

cused. The ground upon which they seem to have been admitted was that two of them were found between the blankets of the bed in which the accused slept, in the cell of the jail in which he was confined, and that one of the letters directed the persons to whom it was written where the third could be found, and that it was found in the place indicated.

It is true that a letter not shown to be in the handwriting of the party to be affected by it may sometimes be looked into for internal evidence of the source from which it came, and that such internal evidence may be sufficient to justify the court in permitting the letter to go to the jury; but the general rule is that the mere contents of a letter purporting to be that of a particular person are not of themselves sufficient evidence of its genuineness.

In discussing this question, Mr. Wigmore, in section 2148. of his work on Evidence, says:

"If Doe is the sole person who knows the circumstances of a certain event, and if a letter arrives purporting to be from Doe and stating those circumstances, and the statement appears by subsequent developments to be accurate, it would be a simple matter for the law, as well as for common sense, to deem that sufficient evidence (see section 171) of Doe's authorship had been furnished. But as there can seldom be a sole person knowing the circumstances of events, and as it could seldom be proved (if it were the case) that no other person had the knowledge, it is obvious that there are here multiple opportunities for a different authorship. Moreover, the other persons knowing the same facts are often persons hostilely interested, who thus have a motive for fabrication; and, if it were once laid down as a general rule of law that the contents of a letter might be taken as evidencing its authenticity, too many would be found to take fraudulent advantage of it. It is true that in the vast majority of transactions of everyday life persons do act upon just such evidence of authenticity, and no more; and it might be supposed that the law would follow this practice. But, in the first place, it is true that frauds are constantly perpetrated in this very manner (as obtaining goods by forging the name and letter heads of reputable merchants); and, secondly, there is little necessity for relying upon such evidence in view of the ample opportunities of proof afforded by witnesses to handwriting. Accordingly, it seems generally conceded that the mere contents of a written communication, purporting to be a particular person's, are of themselves not sufficient evidence of genuineness.

"But where the necessity above mentioned does in fact exist, namely, the impossibility of obtaining handwriting testimony, it would seem to follow that resort must be had to the evidence from contents. Such impossibility may exist for three sorts of

writing: (a) An illiterate's writing by amanuensis; (b) a type-written letter; (c) printed matter."

The general rule and the exception to it upon this question, as stated by Mr. Wigmore, seem to us reasonable, of easy application, in accord with the general principle that in establishing any fact the best evidence of it should be furnished, and is sustained by the weight of authority, so far as we can ascertain, though there do seem to be many cases upon the subject. See *Freeman v. Brewster*, 93 Ga. 648, 21 S. E. 165; *Smith v. Easton*, 54 Md. 138, 39 Am. Rep. 355; *In re Deep River Nat. Bank*, 73 Conn. 341, 47 Atl. 675; *Nichols v. Kingdom Iron, etc., Co.*, 56 N. Y. 618; 17 Cyc. 409-411.

Applying these principles to the facts of this case, it is clear that no proper foundation was laid for the introduction of the letters in question, and that the court erred in admitting them in evidence.

For this error, its judgment must be reversed, the verdict of the jury set aside, and the cause remanded for a new trial, to be had not in conflict with the views expressed in this opinion.

Reversed.

KEITH, P., absent.

#### Note.

Undoubtedly, as this case holds, proof of handwriting is the best evidence to show the genuineness of a letter, but it is also pointed out that such means of authentication may not be available, and the parties must have recourse to other methods of proving the document. In *Lyle v. Higginbotham*, 10 Leigh 63, it was held, that a letter addressed to a third person, to be admissible in evidence, must be sufficiently authenticated, and the mere answer of a party cannot always be fairly considered as an admission of its genuineness. What is sufficient proof that they were written by the person to whom they are accredited, must, of course, depend on the circumstances of each particular case, and is a question for the jury.

---

#### CARR v. BATES & ROGERS CONST. CO.

June 11, 1908.

[61 S. E. 754.]

**Corporations—Foreign Corporations—Actions against—Process.**—Code 1904, § 3215, provides that an action may be brought in any county or corporation wherein the cause of action arose. Section 3220 provides that process against a defendant to answer in any action brought under section 3215 shall not be directed to an officer of any other county or corporation than that wherein the action is brought, but makes the exception, among others, of an action to